
**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KENNETH KIRK SANTIO,

Defendant.

REPORT AND RECOMMENDATION

Case No. 2:00-cr-599-001-TC

Magistrate Judge Evelyn J. Furse

The undersigned Magistrate Judge recommends the District Court hold Mr. Kenneth Kirk Santio in civil contempt for failure to comply with a subpoena requiring completion of a Financial Statement form and production of additional documents and reports as follows.

On August 8, 2012, the United States of America issued a subpoena to Mr. Santio by certified mail requiring completion of a Financial Statement form, attached to the subpoena, and production of additional documents as set forth on the attachment to the subpoena. A Retio Tapoof signed for the subpoena on August 14, 2012. Mr. Santio acknowledged receiving that subpoena and indicated he did respond to the subpoena but did not retain a copy. The United States of America did not receive any response. Mr. Santio admits knowing about the initial order to show cause hearing but states he did not receive notification of the rescheduled hearing. The United States of America contests these representations indicating it sent mail and left telephone messages for Mr. Santio throughout this process, including notifying him of the issuance of the warrant for his failure to appear to show cause in May of 2013. The subpoenaed

information forms part of the United States of America's efforts to obtain payment of \$8,620.00 in restitution plus 2.24% interest in this case.

The undersigned Magistrate Judge finds that the United States of America has not received the subpoenaed information, that Mr. Santio did not show good cause for failure to produce the subpoenaed information, and that further imposition of fines would not lead to compliance with the subpoena because the need for the subpoena arose from Mr. Santio's failure to pay restitution originally.

Based on this information, the undersigned Magistrate Judge recommends that the Court hold Mr. Santio in civil contempt for failure to respond to the subpoena and require that he return to jail five days from adoption of this Report and Recommendation until he does comply with the subpoena.

RECOMMENDATION

For the reasons stated above, the District Court should hold Mr. Santio in civil contempt of court pending compliance with the subpoena.

The Court will send copies of this Report and Recommendation to all parties, who are hereby notified of their right to object. *See* 28 U.S.C. § 636(e). The parties must file any objection to this Report and Recommendation within fourteen (14) days after being served with a copy thereof. *Id.* Failure to object may constitute waiver of objections upon subsequent review.

DATED this 28th day of October, 2013.


U.S. MAGISTRATE JUDGE